

Application No. 10/809,149
Amendment dated November 20, 2006
Reply to Office Action of May 18, 2006

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REMARKS

Applicant amended claims 1 and 19 to further define Applicant's invention.

In the Office Action, the Examiner rejected claim 19 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claim 19 to more clearly define Applicant's invention and to overcome the Examiner's rejection.

The Examiner rejected claims 1-2, 4-13, 15, 17-19, 21-22, 25-26, 27-28, 29-30, and 44 under 35 U.S.C. § 102(e) as being anticipated by US Publication No. 2003/0135220 to Cauthen ("Cauthen"). Independent claim 1, as now amended, recites "rotatably articulating said guard about an axis that is generally perpendicular to the longitudinal axis of the spine to move said body from an open position to a closed position and said extension from an insertion position to a deployed position to move the adjacent vertebral bodies apart." (Underline added for emphasis.)

Cauthen teaches the use of an insertion instrument 10 having a pair of guides 16, 20 that pivot about articulating hinge 22. (Cauthen, page 2, paragraphs 33-34; Figs. 1-2). Guides 16, 20 pivot about an axis that is generally parallel to the longitudinal axis of the spine. (See, e.g., Cauthen, Figs. 1-2). Cauthen does not teach or suggest a method as recited in independent claim 1.

The Examiner rejected claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Cauthen in view of US 5,860,973 to Michelson; rejected claim 24 under 35 U.S.C. § 103(a) as being unpatentable over Cauthen in view of U.S. Patent No. 6,190,414 to Young ("Young"); rejected claims 20, 23, 32-36, 40, 41-43 under 35 U.S.C. § 103(a) as being unpatentable over Cauthen in view of U.S. Patent No. 6,210,412 to ("Michelson '412"); rejected claim 31 under 35 U.S.C. § 103(a) as being unpatentable over Cauthen in view of U.S. Patent No. 5,876,457 to Picha ("Picha"); rejected claim 38 under 35 U.S.C. § 103(a) as being unpatentable over Cauthen in view of U.S. Publication No. 2003/0023209 Gruskin ("Gruskin"); and rejected claim 39 under 35 U.S.C. § 103(a) as being unpatentable over Cauthen in view of U.S. Publication No. 2003/0229401

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Mansouri ("Mansouri"). Applicant submits that the rejections over claims 3, 20, 23, 31-36, 38, 39, 40, 41-43, are rendered moot at least because they depend from an allowable independent claim, or claims dependent therefrom.

Applicant submits that independent claim 1 is patentable and that dependent claims 2-44 dependent from independent claim 1, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: November 20, 2006

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